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CT Corporation System
Agent for Service of Process
The Quikrete Companies, Inc.
818 W. Seventh St, Ste 930
Los Angeles, CA 90017

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter
Quikrete Violations of General Industrial Permit**

Dear Mr. Samaro:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF) regarding The Quikrete Companies, Inc's violations of the State Water Resources Control Board Water Quality Order No. 97-03-DWQ, Natural Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (General Industrial Permit).¹ This letter constitutes CERF's notice of intent to sue for violations of the Clean Water Act and General Industrial Permit for The Quikrete Companies, Inc facility located at 9265 Camino Santa Fe San Diego, CA, 92121 ("Facility" or "Quikrete"), as set forth in more detail below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. § 1365(b)(1)(A)). This letter provides notice of Quikrete's Clean Water Act violations and CERF's intent to sue.

I. Coastal Environmental Rights Foundation (CERF)

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, CA. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. Members of CERF use and enjoy the waters into which pollutants from

¹ On April 1, 2014, the State Water Resources Control Board adopted Order No. 2014-0057-DWQ, which amends the Industrial General Permit ("New Industrial Permit"). These amendments become effective on July 1, 2015. All references to the General Industrial Permit are to the Permit as it existed at the time of the violations noted herein.

Further, though Quikrete did sample on April 10, 2010, only TOC and Fe were sampled. The sample was not monitored for pH, TSS, or SC as required.

The Quikrete Owners and/or Operators therefore had numerous opportunities to sample but failed to do so. They are thus subject to penalties in accordance with the General Industrial Permit – punishable by a minimum of \$37,500 per day of violation. (33 U.S.C. §1319(d); 40 CFR 19.4).

C. The Quikrete Facility Discharges Contaminated Storm Water in Violation of the General Industrial Permit

Though the Quikrete Owners and/or Operators have consistently failed to monitor as required, what monitoring has been done indicates consistent exceedances and violations of the General Industrial Permit. Discharge Prohibition A(2) of the General Industrial Permit prohibits storm water discharges and authorized non-storm water discharges which cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges to surface or groundwater that adversely impact human health or the environment. In addition, receiving Water Limitation C(2) prohibits storm water discharges and authorized non-storm water discharges, which cause or contribute to an exceedance of any water quality standards, such as the CTR or applicable Basin Plan water quality standards. "The California Toxics Rule ("CTR"), 40 C.F.R. 131.38, is an applicable water quality standard." (*Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 926). "In sum, the CTR is a water quality standard in the General Permit, Receiving Water Limitation C(2). A permittee violates Receiving Water Limitation C(2) when it 'causes or contributes to an exceedance of' such a standard, including the CTR." (*Id.* at 927).

If a discharger violates Water Quality Standards, the General Industrial Permit and the Clean Water Act require that the discharger implement more stringent controls necessary to meet such Water Quality Standards.(General Industrial Permit, Fact Sheet p. viii; 33 U.S.C. § 1311(b)(1)(C)). The Quikrete Owners and/or Operators have failed to comply with this requirement, routinely violating Water Quality Standards without implementing BMPs to achieve BAT/BCT or revising its SWPPP pursuant to section (C)(3).

As demonstrated by sample data submitted by Quikrete, from at least July 2, 2010 through the present, Quikrete Owners and/or Operators have discharged and continue to discharge storm water containing pollutants at levels in violation of water quality prohibitions and limitations during every significant rain event. The Quikrete Facility's sampling data reflects numerous discharge violations (see below). Quikrete's own sampling data is not subject to impeachment. (*Baykeeper, supra*, 619 F.Supp. 2d at 927, citing *Sierra Club v. Union Oil Co. of Cal.*, (9th Cir. 1987) 813 F.2d 1480, 1492 ["when a permittee's reports indicate that the permittee has exceeded permit limitations, the permittee may not impeach its own reports by showing sampling error"]).

This data further demonstrates the Quikrete Facility continuously discharges contaminated storm water during rain events which have not been sampled. (See Exhibit A, rainfall data).

Industrial Permit does require monitoring of additional parameters that "serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment." The Quikrete Facility has had elevated specific conductance during every monitoring event. Therefore, the SWPPP should include continued monitoring for this parameter.

Notably, the Regional Board specifically notified the Quikrete Owners and/or Operators of the need to update the SWPPP to incorporate necessary elements after a site visit and inspection in 2013. It took Quikrete two years to update its SWPPP. During those two years, the Facility continued to discharge contaminated runoff into receiving waters. Notwithstanding the recent revisions, the June 2015 SWPPP fails to account for the numerous and repeated violations identified by Quikrete's monitoring data – ensuring these violations continue. The SWPPP is therefore inadequate.

Every day the Quikrete Owners and/or Operators operate the Facility without an adequate SWPPP, is a separate and distinct violation of the General Industrial Permit, New Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Quikrete Owners and/or Operators have been in daily and continuous violation of the General Industrial Permit for not submitting a SWPPP since enrollment on July 2, 2010. These violations are ongoing and the Quikrete Owners and/or Operators will continue to be in violation every day they fail provide a SWPPP for the Facility. Thus, the Quikrete Owners and/or Operators are liable for civil penalties of up to \$37,500 per day of violation for 1,830 violations of the General Industrial Permit and the Clean Water Act.

III. Remedies

Upon expiration of the 60-day period, CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, CERF is willing to discuss effective remedies for the violation noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, CERF will move forward expeditiously with litigation.

Quikrete must develop and implement an updated SWPPP, install BMPs to address the numerous water quality violations, and implement a robust monitoring plan. Should the Quikrete Owners and/or Operators fail to do so, CERF will file an action against Quikrete for its prior, current, and anticipated violations of the Clean Water Act. CERF's action will seek all remedies available under the Clean Water Act § 1365(a)(d). CERF will seek the maximum penalty available under the law which is \$37,500 per day.

CERF may further seek a court order to prevent Quikrete from discharging pollutants. A strong or substantial likelihood of success on the merits of CERF's claim exists, and irreparable injuries to the public, public trust resources, and the environments will result if the Facility further discharges pollutants into Carroll Canyon Creek and Los Penasquitos Lagoon. The cessation of the Facility's discharge will not cause substantial harm to others, and the public interest would be served in preventing discharge of pollutants into receiving waters.

EXHIBIT A

Qualifying Rainfall Events (.1 inches of rain or more) During Business Hours

NOAA National Climactic Data Center

Stations: COOP:047740 - SAN DIEGO LINDBERGH FIELD, CA US

Data Types: HPCP - Precipitation (100th of an inch)

2011

<u>Month</u>	<u>Inches</u>	<u>Time:</u>
3-Jan	0.85	
4-Jan	0.1	
18-Feb	0.24	5:00 AM
20-Feb	0.2	
26-Feb	0.8	
27-Feb	0.22	
7-Mar	0.2	
21-Mar	0.89	
22-Mar	0.14	
24-Mar	0.25	
26-Mar	0.15	
9-Apr	0.14	
18-May	0.73	
29-May	0.1	
4-Nov	0.34	4:00 PM
12-Nov	1.04	1:00 PM
12-Dec	0.96	9:00 AM
TOTAL	7.35	

2012

<u>Month</u>	<u>Inches</u>	<u>Time:</u>
23-Jan	0.2	2:00 PM
24-Jan	0.28	
7-Feb	0.23	4:00 PM
14-Feb	0.34	
16-Feb	0.2	
28-Feb	0.72	
17-Mar	0.24	1:00 PM
18-Mar	0.47	
25-Mar	0.43	5:00 PM
1-Apr	0.11	
11-Apr	0.45	
13-Apr	0.33	4:00 PM
26-Apr	0.61	
12-Oct	0.77	
8-Nov	0.14	
1-Dec	0.23	
13-Dec	1.6	8:00 AM
14-Dec	0.28	
15-Dec	0.37	
19-Dec	0.47	
25-Dec	0.37	
30-Dec	0.28	
TOTAL	9.12	